

EXHIBIT 15

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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DEPUY MITEK, INC., a :
Massachusetts Corporation, : Civil Action No.
: 04-12457 PBS
Plaintiff, :

-vs-

ARTHREX, INC., a Delaware :
Corporation, and PEARSALLS : EXPERT DEPOSITION OF:
LTD., a Private Limited : ROBERT T. BURKS, M.D.
Company of the United :
Kingdom, :

Defendants.

-O-

Location: Marriott University Hotel
Salt Lake City, Utah

Date: June 7, 2006
3:00 p.m.

Reporter: Denise Kirk, CSR/RPR

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<p>6</p> <p>1 court reporter can transcribe them as opposed to 2 shaking your head or nodding your head; do you 3 understand that? 4 A. Yes. 5 Q. Also, if you'll allow me to finish the 6 question before you answer, it will make for a better 7 transcript. Even though you may even be able to 8 anticipate the end of my question by what I say in the 9 beginning, if you'd allow me to finish and then answer 10 it will allow the reporter to make a clear transcript; 11 do you understand that? 12 A. I do. 13 Q. Also, if I ask you a question and you 14 don't understand, I'll ask that you tell me you don't 15 understand the question. Otherwise, I'll assume that 16 you did understand the question; is that fair? 17 A. Fair. 18 Q. Are you being represented today by 19 counsel? 20 A. Yes. 21 Q. Who is your counsel? 22 A. Sal Tamburo. 23 Q. Do you know when Sal or the law firm 24 Dickstein Shapiro Morin & Oshinsky began representing 25 you for purposes of this case?</p>	<p>8</p> <p>1 A. Yes. 2 Q. What is Exhibit Number 231? 3 A. A subpoena for me. 4 Q. Did you understand that be Exhibit 231 was 5 a subpoena on you for certain documents and things 6 listed in schedule A of Exhibit 231? 7 A. Yes. 8 Q. Today are you producing any documents or 9 things in response to the subpoena, Exhibit 231? 10 A. No. 11 Q. If you could turn to page two of Exhibit 12 Number 231, please. Do you see request number one for 13 documents there, being all communications between any 14 of Arthrex, you, Dr. Mukherjee and Dickstein Shapiro 15 Morin & Oshinsky concerning the lawsuit commenced by 16 the plaintiff attached as Exhibit 1? 17 A. Yes. 18 Q. Did you perform any search that might be 19 responsive to request number one in Exhibit Number 20 231? 21 A. Yes. 22 Q. Did you find any? 23 A. No. 24 Q. Request number two in Exhibit 231 is all 25 documents concerning this lawsuit, including, but not</p>
<p>7</p> <p>1 A. In February. 2 Q. Is that when Arthrex or Dickstein 3 contacted you with respect to your role in this case? 4 A. Yes. 5 Q. Are you being compensated for the time you 6 spend on this lawsuit? 7 A. Yes. 8 Q. How are you being compensated? 9 A. How much? 10 Q. Yes. 11 A. \$400 an hour. 12 Q. Was that a negotiated fee or was that your 13 standard fee for doing expert consulting? 14 A. I don't really have a standard fee, so I 15 guess you could call it negotiated. 16 Q. Other than money, is there any other 17 compensation you are receiving for work on this case? 18 A. No. 19 Q. Were you given any dollar amount that you 20 should not exceed in performing work for Arthrex in 21 this case? 22 A. No. 23 Q. I'm going to hand you DePuy Mitek Exhibit 24 231 and ask you if you recognize this document, 25 Exhibit 231?</p>	<p>9</p> <p>1 limited -- well, hold on. Strike that. 2 Did you perform a reasonable search for 3 documents in response to request number two in 4 Schedule A of Exhibit 231? 5 A. I guess I don't see the difference. There 6 aren't any documents that I'm aware of in the lawsuit. 7 Q. Under things to be produced on page two of 8 Exhibit Number 231, request number one is all tested 9 and untested samples referred to in Expert Report of 10 Robert T. Burks, MD dated March 24, 2006, including, 11 but not limited to suture A and suture B. Do you see 12 that? 13 A. I do. 14 Q. Did you perform a search for things 15 responsive to request number one? 16 A. No. 17 Q. You did not? 18 A. I knew it didn't exist. 19 Q. You knew what didn't exist? 20 A. The suture. 21 Q. You mean the tested and untested samples? 22 A. The pieces that I had I had disposed of 23 when I was done. I knew there wasn't anything to look 24 for. 25 Q. Under request number two on things to be</p>

<p style="text-align: right;">10</p> <p>1 produced on page two of Exhibit 231 is all equipment 2 used to test the samples as described in paragraphs 3 nine through 13 of Expert Report of Robert T. Burks, 4 MD dated March 24, 2006, including, but not limited to 5 the equipment that was used to cut and wet the samples 6 and to conduct the tactile feel analysis and knot 7 tie-down analysis; do you see that? 8 A. I do. 9 Q. Did you perform a search for the materials 10 requested in request number 2? 11 A. No. 12 Q. Why not? 13 A. The equipment that was used was a pair of 14 scissors just to cut it, something from home, I felt 15 like it didn't have relevance. 16 Q. What about the solution that was used to 17 wet these tested samples? 18 A. I used tap water. 19 Q. Did you use anything else in performing 20 the tests described in paragraphs nine through 13 of 21 your expert report other than tap water and scissors 22 and the sutures? 23 MR. TAMBURO: It might help if the witness 24 had his report in front of him to refer to. 25 A. The things used, like a pair of gloves,</p>	<p style="text-align: right;">12</p> <p>1 Q. What about medical school? 2 A. '78. 3 Q. Then, after medical school, where did you 4 go? 5 A. To residency training. 6 Q. When did you finish your residency 7 training? 8 A. '83. 9 Q. Where was your residency training? 10 A. University of California San Diego. 11 Q. Did you have a specialty there? 12 A. Yes. Well, there's no specialty in 13 training per se, but I did do a fellowship during that 14 time with Dale Daniel at Kaiser Permanente. 15 Q. What was that fellowship in? 16 A. Knee and sports medicine. 17 Q. When did you finish your fellowship in 18 knee and sports medicine? 19 A. '83. 20 Q. Other than those programs or degrees you 21 mentioned, are there any other -- is there any other 22 formal education that you've gone through? 23 A. No. 24 Q. Once you completed your fellowship in knee 25 and sports medicine in 1983, what did you do?</p>
<p style="text-align: right;">11</p> <p>1 are disposed of after and they're just a generic set. 2 There wasn't anything used that would be unique that I 3 felt would be worthwhile to produce. 4 Q. So you used gloves when you performed the 5 tactile feel analysis and knot tie-down analysis? 6 A. I did both. I used and didn't use gloves. 7 Q. Is there any reason why you decided not to 8 bring gloves today? 9 A. No. 10 Q. Did your counsel advise you to bring 11 gloves? 12 A. No. 13 Q. Did you go over -- did you have a chance 14 to go over Exhibit 231 with your counsel before coming 15 to today's deposition? 16 A. Yes, we looked at it. 17 Q. Dr. Burks, could you please describe your 18 formal education post-high school for me, please. 19 A. I did medical school at St. Louis 20 university. I guess after high school I did college 21 at Southern Methodist University, medical school at 22 St. Louis university, orthopedic training at 23 University of California San Diego. 24 Q. When did you graduate from undergrad? 25 A. Undergrad college was '74.</p>	<p style="text-align: right;">13</p> <p>1 A. I went into private practice in St. Louis, 2 Missouri. 3 Q. What was the focus of your private 4 practice in St. Louis? 5 A. Sports medicine, general orthopedics. 6 Q. Did you focus on any particular parts of 7 the body within sports medicine and general 8 orthopedics? 9 A. Knee and shoulder were the big focus. 10 Q. And when did you leave private practice in 11 St. Louis? 12 A. I was there three years; I believe it was 13 '86. 14 Q. Then what did you do in 1986? 15 A. I went to Wayne State University in 16 Detroit. 17 Q. What did you do at Wayne State? 18 A. I was on the academic staff there and was 19 the head of sports medicine. 20 Q. Your time spent at Wayne State, was that 21 strictly in an academic environment or did that also 22 include a clinical practice? 23 A. Yes. I mean, it was a clinical practice, 24 but it was as a full-time faculty member. 25 Q. Can you explain how that works, your role</p>

4 (Pages 10 to 13)

<p style="text-align: right;">14</p> <p>1 at Wayne State, how it was spent between full-time 2 faculty member and participating in a clinical 3 practice? 4 A. Well, there's really no distinction. I 5 mean, my job was to take care of patients and people. 6 And so the education was for residents and that's what 7 they were training to do was take care of people. 8 So there really wasn't a distinction 9 between a clinical practice and what you are doing 10 academically as far as your work goes. 11 Q. So did you teach in a classroom setting? 12 A. No. 13 Q. So I think I understand. What type of 14 medicine did you practice at Wayne State as a 15 full-time faculty member and in a clinical practice? 16 A. It was orthopedic surgery with an emphasis 17 in sports medicine. 18 Q. Again, did you focus on the knee and 19 shoulder areas? 20 A. Yes. 21 Q. When you were at Wayne State what were the 22 -- generally what were the procedures that you would 23 perform for shoulder surgeries? 24 A. Perform shoulder instability operations, 25 rotator cuff operations, things that we do for what we</p>	<p style="text-align: right;">16</p> <p>1 Q. In 1988 after leaving Wayne State, what 2 did you do? 3 A. I came here to the University of Utah. 4 Q. What position did you enter the University 5 of Utah in 1988? 6 A. I was an assistant professor in orthopedic 7 surgery. And we didn't really have a true division, 8 but I was part of the sports medicine team. 9 Q. Can you generally describe your duties as 10 an assistant professor in the orthopedic surgery 11 department at the University of Utah? 12 A. Duties were to take care of standard 13 patients that we would see, to instruct residents in 14 clinical evaluation of patients and surgical treatment 15 of patients, to be involved in some areas of research 16 and produce academically, and were involved with 17 taking care of the athletic teams. 18 Q. While at the University of Utah, I take it 19 from 1988 to the present you've remained at the 20 University of Utah? 21 A. Yes. 22 Q. From 1988 to the present, do you perform 23 any classroom teaching? 24 A. Minimally. Occasionally it comes up, but 25 not very much.</p>
<p style="text-align: right;">15</p> <p>1 call impingement, shoulder pain procedures, procedures 2 that revolve around the clavicle. 3 Q. Anything else you can think of? 4 A. I mean, it's a pretty wide area, but those 5 are the main things. 6 Q. What about when you were at Wayne State, 7 what were the procedures that you would perform for 8 knee surgeries? 9 A. Ligament reconstructions, operations for 10 instability of the knee cap, cartilage procedures, 11 meniscus procedures. 12 Q. When you were at Wayne State, did you 13 perform any ankle surgeries? 14 A. Sure. 15 Q. What ankle surgeries? What procedures 16 would you perform doing ankle surgeries? 17 A. The main procedures revolved around 18 arthroscopy, and then I would do some procedures that 19 revolved around loose ankle joints where people have 20 chronic ankle sprains and tightening those up. 21 Q. Then, I take it, at some point you left 22 Wayne State? 23 A. Correct. 24 Q. What year was that? 25 A. '88.</p>	<p style="text-align: right;">17</p> <p>1 Q. What classes would you teach when it comes 2 up? 3 A. It's usually just an isolated lecture, not 4 like a class series. So it would be lectures to the 5 residents or to medical students on a specific topic, 6 sometimes to physical therapy students. 7 Q. Since 1988, how have your duties and 8 responsibilities at the University of Utah changed? 9 A. I don't think they've changed much. 10 Q. Okay. At some point you did become head 11 of the sports medicine division, though, right? 12 A. Correct. 13 Q. Do you know when that happened? 14 A. I'd be guessing a little. I'm not sure of 15 the exact year. 16 Q. How about 1992, does that sound familiar? 17 A. That's probably close. 18 Q. Dr. Burks, I'm going to hand you Exhibit 19 Number 233. This is a printout of a web page from the 20 University of Utah. If you could just please look at 21 that. 22 MR. TAMBURO: Do you have another copy? 23 Q. No. Just let me know if that's generally 24 accurate. 25 A. Yes.</p>

<p style="text-align: right;">50</p> <p>1 A. Poor wording. I guess it was to say that 2 my sense of how FiberWire works and handles, that 3 subjective feel of that is in that environment. 4 Q. So you don't use FiberWire in any 5 non-surgical environment, do you? 6 A. Well, I've used FiberWire in laboratory 7 studies when we do cadaveric studies or other things. 8 But I don't use it for non-medically related things. 9 Q. When you say "most of my subjective use of 10 FiberWire occurs during surgery", were you referring 11 to the surgical environment versus non-surgical 12 environment like you just described? 13 A. Right. 14 Q. Then you say "FiberWire is generally wet 15 in the surgical environment", what does that mean? 16 A. Well, in the environment where I work 17 arthroscopically we work with fluids, so it's hard for 18 a suture not to be wet. 19 Obviously, there are times where we work 20 in a dry air environment and the suture may get wet 21 passing through tissue, but it's not necessarily 22 intentionally wetted like it is with arthroscopy. 23 Q. During surgery, do you wet FiberWire 24 before is it's introduced into the body? 25 A. Not deliberately, no.</p>	<p style="text-align: right;">52</p> <p>1 determines whether you wear gloves? 2 A. In a nonsurgical environment it would be 3 protection for me. 4 Q. Okay. Protection from what? 5 A. Well, if we do cadaveric surgery some 6 cadavers have diseases so we may want to have gloves 7 on when we work with them. 8 Q. What about in the laboratory environment, 9 when you are using FiberWire, do you wear gloves? 10 A. I guess it depends on what you mean by the 11 laboratory environment. 12 Q. By laboratory environment, I mean anything 13 other than a surgical or nonsurgical environment like 14 we've been talking about. 15 A. Well, we do, for example, cadaveric 16 surgery in the laboratory, so we would consider that a 17 laboratory environment, and I would use gloves for 18 self-protection in that setting. 19 Q. Let me ask you a better question. Outside 20 of a surgical environment or nonsurgical environment, 21 do you wear gloves when using FiberWire? 22 A. I guess I would say no. 23 Q. Dr. Burks, if you could turn in Exhibit 24 232 to paragraph eight, you state: "Sometime in 25 February 2006 I was contacted by attorneys for</p>
<p style="text-align: right;">51</p> <p>1 Q. Earlier you said the suture may get wet 2 passing through tissue, but it's not necessarily 3 intentionally like it is with arthroscopy. I don't 4 know what that means. 5 A. In an arthroscopic environment we have a 6 microscope in a joint and we distend the joint so we 7 can see with fluid. 8 So any time we introduce suture into that 9 environment it's under water, if you will. So no 10 matter what we do with it, by the time we start to use 11 it, it's wet. 12 Q. When using FiberWire in a surgical 13 environment, do you always wear gloves? 14 A. Yes. 15 Q. What about in the -- let me rephrase the 16 question. In a nonsurgical environment, do you always 17 wear gloves when using FiberWire? 18 A. No. 19 Q. What determines whether you wear gloves? 20 A. Either sterility for a patient or 21 protection for myself. 22 Q. If it's a nonsurgical environment, how 23 does sterility of the patient matter? 24 A. It doesn't. 25 Q. In a nonsurgical environment, what</p>	<p style="text-align: right;">53</p> <p>1 Arthrex, Inc., and asked to conduct a tactile feel 2 analysis as well as a knot tie-down analysis of coated 3 and uncoated FiberWire suture. I agreed to conduct the 4 analysis." Do you see that? 5 A. I do. 6 Q. Who contacted you in February of 2006? 7 A. Sal Tamburo. 8 Q. Anyone else? 9 A. No. 10 Q. Do you remember the substance of the 11 conversation you had with Sal in February of 2006? 12 A. Yes. 13 Q. What was that substance? 14 A. He said that Arthrex and more, in 15 particular, FiberWire was involved in a patent 16 infringement lawsuit and he was wondering, since I've 17 had experience of using FiberWire, if I would be 18 willing to talk about FiberWire and how its used, 19 etc., and if I'd be willing to look at FiberWire in a 20 couple of different states and give him feedback on 21 what I thought about that. 22 Q. What were those couple different states? 23 A. My understanding was that it was a coated 24 suture and a not-coated suture. 25 Q. Anything else?</p>

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<p style="text-align: right;">62</p> <p>1 remember any other marking on the spools?</p> <p>2 A. No.</p> <p>3 Q. Do you know who put the samples on the</p> <p>4 spools that you received in March 2006?</p> <p>5 A. No.</p> <p>6 Q. Could it be that there were other markings</p> <p>7 on the spools other than suture A and suture B?</p> <p>8 MR. TAMBURRO: Objection, asked and</p> <p>9 answered.</p> <p>10 A. Certainly there could have been, you know,</p> <p>11 some marking or name, but I don't remember anything</p> <p>12 else that would be pertinent.</p> <p>13 Q. When you received the samples in March</p> <p>14 2006, did you have any indication of whether suture A</p> <p>15 or suture B was coated or uncoated?</p> <p>16 A. No.</p> <p>17 Q. So once you received the samples in the</p> <p>18 two plastic bags on the spools, what did you do next?</p> <p>19 A. Took the suture out, cut the suture with</p> <p>20 just regular scissors to make some lengths, and sort</p> <p>21 of had an A pile and a B pile.</p> <p>22 Q. Where were you when you received the</p> <p>23 suture samples in March of 2006?</p> <p>24 A. I believe they came to my office.</p> <p>25 Q. Did you perform the test in Exhibit 232 at</p>	<p style="text-align: right;">64</p> <p>1 not told which sample was coated and which was</p> <p>2 uncoated.</p> <p>3 Other than the coated versus uncoated</p> <p>4 distinction, were you told of any other differences</p> <p>5 between the two samples?</p> <p>6 A. No.</p> <p>7 Q. Once you cut the sutures off the spools,</p> <p>8 what did you do with the spools?</p> <p>9 A. Ultimately I pitched them.</p> <p>10 Q. At home?</p> <p>11 A. Uh-huh.</p> <p>12 Q. You threw them away?</p> <p>13 A. Yes.</p> <p>14 Q. What about the plastic bags that were used</p> <p>15 to hold the suture samples?</p> <p>16 A. Same.</p> <p>17 Q. You threw them away?</p> <p>18 A. Uh-huh.</p> <p>19 Q. So you cut five samples from each spool,</p> <p>20 right?</p> <p>21 A. Correct.</p> <p>22 Q. So you had five strands of suture A and</p> <p>23 five strands of suture B each segregated into their</p> <p>24 own pile, right?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">63</p> <p>1 your office or at home?</p> <p>2 A. I actually did it at home.</p> <p>3 Q. Did you do any tests at the office?</p> <p>4 A. No.</p> <p>5 Q. So you received the samples in the office</p> <p>6 and then brought them home?</p> <p>7 A. Yes.</p> <p>8 Q. Did you cut them at home?</p> <p>9 A. Yes.</p> <p>10 Q. And then after you cut them, how did you</p> <p>11 segregate suture A and suture B?</p> <p>12 A. I just put all the A's from the one spool</p> <p>13 in a single pile and the B's in a separate pile.</p> <p>14 Q. How long were the lengths of suture when</p> <p>15 you cut them off the spool?</p> <p>16 A. They were roughly a couple of feet.</p> <p>17 Q. Was there anybody else present when you</p> <p>18 performed the tests in Exhibit 232?</p> <p>19 A. No.</p> <p>20 Q. Was there anybody else present when you</p> <p>21 cut the samples off the spools?</p> <p>22 A. No.</p> <p>23 Q. It also says in paragraph nine: I was</p> <p>24 told by Arthrex's attorney that one sample was coated</p> <p>25 and that the other sample was uncoated; however, I was</p>	<p style="text-align: right;">65</p> <p>1 Q. What did you do next?</p> <p>2 A. I spent a little time taking different</p> <p>3 sutures from one pile or from the other pile and just</p> <p>4 looked at them, felt them, handled them to see if I</p> <p>5 could tell much difference between them.</p> <p>6 Then I put them around a small hook to be</p> <p>7 like a suture anchor environment, if you will, and I</p> <p>8 tied some knots down, some slip knots, to see how it</p> <p>9 would feel.</p> <p>10 Then I wet it, immersed the sutures, and</p> <p>11 tied again to see if I could tell much of a</p> <p>12 difference.</p> <p>13 Q. You said you spent a little time taking</p> <p>14 different sutures from one pile and the other and just</p> <p>15 looked at them, handled them, felt them to see if I</p> <p>16 could tell much difference between them.</p> <p>17 What you just described there, is that the</p> <p>18 tactile feel analysis that you performed as reflected</p> <p>19 in Exhibit 232?</p> <p>20 A. Yes.</p> <p>21 Q. About how long did it take to perform the</p> <p>22 tactile feel analysis as reflected in Exhibit 232 from</p> <p>23 the time you cut the sutures until the time you</p> <p>24 concluded that there was a difference between suture A</p> <p>25 and suture B??</p>

<p>70</p> <p>1 A. I'll try to clarify again. I didn't, in my 2 mind, view it as a pure test A/test B. So when you 3 handle suture tying knots and doing things with it, 4 you have a tactile feel. So I didn't -- so that's part 5 of the knot tying. So I didn't segregate it out as two 6 isolated separate things.</p> <p>7 Q. So in your report, Exhibit 232, are you 8 making two conclusions based on a conclusion of the 9 tactile feel analysis and a conclusion based on the 10 knot tie-down analysis?</p> <p>11 A. I'll try to clarify again. A knot tie-down 12 analysis I view as having a tactile aspect to it as 13 well, you are feeling the suture as you tie it. So I 14 don't view them as totally isolated.</p> <p>15 Q. Okay. So how many analyses did you 16 perform as reflected in Exhibit 232?</p> <p>17 A. I used all the strands and tied multiple 18 knots on all the strands. So I'm not, I guess, quite 19 sure -- I can't tell you I did 20 knots on each strand 20 or 30, but they were each used for multiple knot 21 tying.</p> <p>22 Q. My question might have been unclear. Not 23 how many times did you perform the analysis, but how 24 many different analyses did you do in coming to the 25 conclusions as expressed in Exhibit Number 232?</p>	<p>72</p> <p>1 A. I tried to try knots partly with gloves to 2 see if I felt that there was a difference and partly 3 without gloves to see if I could feel a difference.</p> <p>4 Q. Did using gloves in the tests in Exhibit 5 232 affect your ability to distinguish between suture 6 A and suture B?</p> <p>7 A. I think, clearly, using gloves makes the 8 feel of the suture a little different. I guess I can't 9 answer directly to say if it makes the difference but, 10 yes, it probably makes a difference.</p> <p>11 Q. What difference does it make?</p> <p>12 A. You are covering your skin with the 13 gloves, so, you know, as you feel suture, your 14 absolute sensation of the suture probably changes 15 some.</p> <p>16 Q. Could you have reached the same 17 conclusions you reached in Exhibit 232 if you solely 18 used gloves in performing the tests?</p> <p>19 A. I didn't do it that way, so I guess I 20 can't answer that and say yes or no.</p> <p>21 Q. Did not using gloves help you to 22 distinguish between suture A and suture B?</p> <p>23 A. Potentially, yes.</p> <p>24 Q. Did it or -- I'm asking you if, in fact, 25 it did?</p>
<p>71</p> <p>1 MR. TAMBURRO: Objection, vague.</p> <p>2 A. I felt the suture and I tied knots with 3 the suture.</p> <p>4 Q. But earlier you testified that that's all 5 encompassed in the knot tie-down analysis. So I'm 6 wondering did you do a knot tie-down analysis and 7 that's it and that had two subparts or two different 8 analyses and then come up with a conclusion -- come up 9 with two different conclusions?</p> <p>10 MR. TAMBURRO: Objection, mischaracterizes 11 the testimony.</p> <p>12 A. Again, I'm not trying to characterize in 13 this that these are segregated separate tests, but 14 this was a tactile feel and knot tying. It was a 15 length subjective feel on both of those.</p> <p>16 So when you tie knots, you get a tactile 17 feel. So I was making the statement that on the 18 tactile feel, how it feels to me, it felt this way and 19 when I tied knots, it also felt that way. It's 20 sometimes hard to do one without doing the other.</p> <p>21 Q. When you were doing -- when you did the 22 tactile feel analysis and the knot tie-down analysis 23 as expressed in Exhibit 232 were you wearing gloves?</p> <p>24 A. Not always.</p> <p>25 Q. Can you explain the breakdown?</p>	<p>73</p> <p>1 A. And I'm telling you my answer is it 2 potentially did.</p> <p>3 Q. I don't think I understand that. How could 4 it potentially? I mean either it did or didn't, 5 right?</p> <p>6 A. No.</p> <p>7 MR. TAMBURRO: Objection, argumentative.</p> <p>8 Q. Why do you say "potentially"?</p> <p>9 A. I'm trying to be honest. I did feel 10 without gloves and I know there's a pile A and a pile 11 B, so there is potential that feeling suture without 12 gloves made me feel that A was a little different than 13 B that had I been gloved the entire time, I might not 14 have detected.</p> <p>15 Q. So from start to finish then after you cut 16 the suture samples until the time you made your 17 conclusions expressed in Exhibit Number 232, how long 18 was that?</p> <p>19 A. I'll give you the same answer: 45 minutes 20 or so.</p> <p>21 Q. So the 45 minutes encompassed roughly ten 22 minutes you spent on the tactile feel analysis?</p> <p>23 A. No.</p> <p>24 Q. So 45 minutes plus ten minutes or just 45 25 minutes?</p>

<p style="text-align: right;">74</p> <p>1 A. I would say it was probably 45 minutes 2 plus ten minutes. 3 Q. Did you tie knots in each of the 4 individual five sutures from suture A and suture B? 5 MR. TAMBURO: Objection, asked and 6 answered. 7 A. Yes. 8 Q. After you performed the tactile feel 9 analysis and knot tie-down, as reflected in Exhibit 10 232, what did you do with the sutures that you tested? 11 A. I pitched them with the spools. 12 Q. You threw them out? 13 A. Yes. 14 Q. Did counsel ever instruct you to not throw 15 away the samples? 16 A. No. 17 Q. Did counsel give you any instructions at 18 all what to do with the samples once you performed the 19 tests on them? 20 A. No. 21 Q. Did you throw them away at home or at the 22 office? 23 A. At home. 24 Q. And then once you completed the tactile 25 feel analysis and knot tie-down analysis and once you</p>	<p style="text-align: right;">76</p> <p>1 A. No. 2 Q. What program do you use for your e-mails? 3 A. At home it's a Comcast e-mail and then 4 here it's a Group-Wise. 5 Q. But do you use -- what e-mailing system do 6 you use at home? Is it AOL or Lotus Notes or 7 Microsoft Outlook or a Yahoo account? 8 A. It's a Comcast. 9 Q. That's done on a personal computer? 10 A. Yes. 11 Q. What about in the office? What kind of 12 e-mailing system do you use? 13 A. We call it Group-Wise. 14 Q. Is the e-mail account you have at home 15 different than the one you have at the office? 16 A. Uh-huh. 17 Q. Did you look for the e-mail in response to 18 the subpoena, Exhibit Number 231? 19 A. Yes. The e-mail -- I mean, my awareness 20 of the e-mails is that they go back two or three weeks 21 or so and then after that they just go into 22 cyberspace. 23 Q. So you did not look for the e-mail in 24 response to the subpoena, Exhibit 231? 25 A. No, because that was like three months</p>
<p style="text-align: right;">75</p> <p>1 threw away the sutures, what did you do next? 2 A. Well, as it regards this, I sent an e-mail 3 to Sal and said here's what I thought. 4 Q. Do you have a copy of that e-mail? 5 A. Nope. 6 Q. What did you do with the e-mail that you 7 sent to Sal after you concluded the tests? 8 A. What did I do with the e-mail? I didn't do 9 anything with the e-mail. I hit "send". 10 Q. It's still on your computer? 11 A. I would doubt it's on the computer. I 12 mean, just due to the volume, they don't keep three 13 months or four months or whatever. 14 Q. Did you send it from work or home, the 15 e-mail? 16 A. I don't know for sure. 17 Q. You don't know for sure? 18 A. No. 19 Q. Did you delete the e-mail you sent to Sal 20 after you finished performing the tests? 21 A. I'm not sure I understand deleting the 22 e-mail. I sent him an e-mail. I didn't purposefully 23 delete any e-mail. 24 Q. Do you use Microsoft Outlook for your 25 e-mails?</p>	<p style="text-align: right;">77</p> <p>1 ago. 2 Q. When you say the e-mails go back two or 3 three weeks and then go into cyberspace, you are 4 referring to work e-mail or your home e-mail? 5 A. Well, primarily, I guess I'm referring to 6 the work one. I don't use the home as much. So I 7 don't. . . 8 Q. Do you remember what the e-mail said that 9 you wrote to Sal after you performed the tests in 10 Exhibit 232? 11 A. Pretty much what's in here. I just said, 12 you know, sample A to me felt this way compared to 13 sample B. 14 Q. Felt -- what word did you use to describe 15 how suture A felt in relationship to suture B? 16 A. I don't remember specifically but, I mean, 17 I probably used a word like "smoother". 18 Q. But you are not sure? 19 A. I'm not sure of the word. 20 Q. Did Sal send an e-mail back to you once 21 you sent him the e-mail after completing the tests in 22 Exhibit 232? 23 A. Not that I remember specifically. 24 Q. When was the next time you spoke to Sal 25 after sending the e-mail on which you completed the</p>

20 (Pages 74 to 77)

<p style="text-align: right;">82</p> <p>1 (Brief recess.)</p> <p>2 THE VIDEOGRAPHER: Back on the record on</p> <p>3 record 5:38.</p> <p>4 Q. (By Mr. Falke) Dr. Burks, can you explain</p> <p>5 the knot tie-down analysis that you conducted as</p> <p>6 reflected in Exhibit 232, paragraph 12?</p> <p>7 A. It was taking a strand, tying a knot on</p> <p>8 it, sliding the knot down and then putting another</p> <p>9 knot/half hitch, whatever you want to describe it, and</p> <p>10 sliding it down.</p> <p>11 Q. What did you tie the suture samples on?</p> <p>12 A. A hook.</p> <p>13 Q. What type of hook was it?</p> <p>14 A. Just a simple sort of brass hook.</p> <p>15 Q. Did you use the same knot configuration</p> <p>16 for each comparison?</p> <p>17 A. I used the same knots for the different</p> <p>18 groups, but I varied knots to see how different knots</p> <p>19 might feel.</p> <p>20 Q. But for each knot that you tied on suture</p> <p>21 B, you did that same knot on suture A?</p> <p>22 A. Right, right.</p> <p>23 Q. About how many knots did you tie in total</p> <p>24 in the knot tie-down analysis for each suture set,</p> <p>25 generally?</p>	<p style="text-align: right;">84</p> <p>1 A. I mean, I took each strand from each set</p> <p>2 and I tied multiple knots, if you will, in each strand</p> <p>3 so each strand may have had 20 throws in it and. . .</p> <p>4 Q. So does that mean then you did five</p> <p>5 comparisons? You did a knot configuration for each of</p> <p>6 the suture samples?</p> <p>7 MR. TAMBURRO: Objection; mischaracterizes</p> <p>8 the testimony, asked and answered.</p> <p>9 A. I guess I'm trying to go with you, I'm</p> <p>10 just not sure what you. . .</p> <p>11 Q. When you say "comparisons", I mean,</p> <p>12 regardless of the knot configurations or how many</p> <p>13 particular knots were on the one suture, you compared</p> <p>14 that configuration, whatever it is, to the other</p> <p>15 suture set, right?</p> <p>16 A. Correct.</p> <p>17 Q. How many times did you do that?</p> <p>18 MR. TAMBURRO: Objection, vague.</p> <p>19 A. I guess one would say that's five. So the</p> <p>20 five strands in one set got compared to the five</p> <p>21 strands in the other set.</p> <p>22 Q. Right. Did you wet the suture when you did</p> <p>23 the knot tie-down analysis?</p> <p>24 A. Yes.</p> <p>25 Q. How did you wet the sutures?</p>
<p style="text-align: right;">83</p> <p>1 MR. TAMBURRO: Objection, vague.</p> <p>2 A. When you say suture set, you mean the</p> <p>3 group of sutures or the individual strand?</p> <p>4 Q. The set of five.</p> <p>5 A. Okay.</p> <p>6 Q. So as an example, if you did 30 total</p> <p>7 knots is that 15 per suture A and suture B? Let me</p> <p>8 rephrase the question or repeat the question. About</p> <p>9 how many knots did you tie in total for each suture</p> <p>10 set when you did the knot tie-down analysis?</p> <p>11 A. I think it would be, again, hard to give</p> <p>12 you a specific number. I'm not trying to be vague,</p> <p>13 it's just that when you say a knot, for example, I'm</p> <p>14 trying to say that I might throw a half hitch down</p> <p>15 which isn't technically a complete knot, and then I</p> <p>16 might throw another half hitch, so there might be</p> <p>17 multiple half hitches that you could consider one knot</p> <p>18 or you could consider it 20 throws and 20 knots.</p> <p>19 Q. Let me try to help you out there then. How</p> <p>20 many comparisons then did you do in the knot tie-down</p> <p>21 analysis between suture A and suture B?</p> <p>22 MR. TAMBURRO: Objection, vague.</p> <p>23 Q. Do you understand that?</p> <p>24 A. I can tell you what I did and . . .</p> <p>25 Q. Please.</p>	<p style="text-align: right;">85</p> <p>1 A. With tap water.</p> <p>2 Q. Can you explain that?</p> <p>3 A. Sure, I just filled a glass with water and</p> <p>4 put the suture down in it and then tied the knots.</p> <p>5 Q. Did you wet them one at a time?</p> <p>6 A. Yes.</p> <p>7 Q. How long did the suture stay submerged in</p> <p>8 water?</p> <p>9 A. Briefly. Three or four seconds.</p> <p>10 Q. But the same amount of time in the water</p> <p>11 for each suture?</p> <p>12 A. Yes.</p> <p>13 Q. Do you know if the sutures absorb water</p> <p>14 when they're wet?</p> <p>15 A. No.</p> <p>16 Q. You don't know?</p> <p>17 A. No.</p> <p>18 Q. Were each of the -- you come to the</p> <p>19 conclusion in paragraph number 12 of Exhibit 232 that</p> <p>20 when suture A -- there was less friction when sliding</p> <p>21 the knot on the sample labeled suture A as compared</p> <p>22 with sample labeled B. Was that true for all five</p> <p>23 suture samples?</p> <p>24 A. That was a sum feeling on my part. So it</p> <p>25 might not be fair to say it's true on every strand but</p>

22 (Pages 82 to 85)

<p style="text-align: right;">86</p> <p>1 it was my overall take from looking at them.</p> <p>2 Q. Do you remember how many -- strike that.</p> <p>3 Does a suture that has less friction when</p> <p>4 sliding that knot mean that the suture has better knot</p> <p>5 tie-down performance?</p> <p>6 A. Not necessarily.</p> <p>7 Q. Why?</p> <p>8 A. Well, if you envision a perfectly smooth</p> <p>9 suture, for example, if you slide a knot it might</p> <p>10 slide very easily but it might also tend to not hold</p> <p>11 as well because there's not as much inherent friction</p> <p>12 in it.</p> <p>13 Q. Does a smoother suture mean it has better</p> <p>14 tactile feel than a suture that is not as smooth?</p> <p>15 A. I would say no, I don't know that I'd say</p> <p>16 it's a better tactile feel.</p> <p>17 Q. Why did you use a surgeon's knot when you</p> <p>18 did the knot tie-down analysis in Exhibit 232?</p> <p>19 A. I think what I would do is say that --</p> <p>20 again, maybe my critique of the verbiage would be at</p> <p>21 fault. So I guess I wouldn't -- you know, we talked</p> <p>22 earlier about what a surgeon's knot is.</p> <p>23 Q. Uh-huh?</p> <p>24 A. And I probably didn't focus on it enough</p> <p>25 to say that they're not necessarily surgeons' knots as</p>	<p style="text-align: right;">88</p> <p>1 Q. But were there any where you couldn't tell</p> <p>2 a difference? I mean, it was pretty close?</p> <p>3 A. Sure, it was pretty close.</p> <p>4 Q. Let me rephrase. Were there any where you</p> <p>5 couldn't tell the difference between suture A and</p> <p>6 suture B?</p> <p>7 MR. TAMBURO: Objection, asked and</p> <p>8 answered.</p> <p>9 A. I don't remember specifically having ones</p> <p>10 that I would say I clearly feel a difference on this</p> <p>11 one and I clearly don't on the next one. It was a</p> <p>12 general feel of all of them.</p> <p>13 Q. Dr. Burks, how would you describe your</p> <p>14 relationship with Ethicon?</p> <p>15 A. I guess none.</p> <p>16 Q. None? So you would say that you have a</p> <p>17 closer relationship with Arthrex?</p> <p>18 A. Yes.</p> <p>19 Q. What about could you describe your</p> <p>20 relationship with DePuy Mitek?</p> <p>21 A. I have been a consultant with DePuy Mitek.</p> <p>22 Just this week I was helping on an educational course</p> <p>23 for DePuy Mitek reps. But I've had no product or</p> <p>24 anything like that with DePuy Mitek.</p> <p>25 Q. You mean development product work?</p>
<p style="text-align: right;">87</p> <p>1 I described them.</p> <p>2 Q. Okay, so why did you use the particular</p> <p>3 knots, then, that you used in the knot tie-down</p> <p>4 analysis?</p> <p>5 A. I just tried to reproduce what I do in the</p> <p>6 operating room.</p> <p>7 Q. In paragraph 11 in Exhibit 232 you state</p> <p>8 that suture A generally felt smoother than suture B.</p> <p>9 What do you mean by "generally"?</p> <p>10 A. The differences between the sutures were</p> <p>11 subtle. I mean, they were not sharp, distinct. So I'm</p> <p>12 meaning that in comparing them, my take was that it</p> <p>13 was generally smoother.</p> <p>14 Q. Were there any of the sutures in the</p> <p>15 tactile feel analysis where you couldn't tell the</p> <p>16 difference between suture A and suture B?</p> <p>17 A. It was not my intent at the time in</p> <p>18 looking at the sutures to compare each strand side to</p> <p>19 side. My intent was to look at sort of spool A and</p> <p>20 spool B. So it was to get a feel of, in general, how</p> <p>21 do they feel between the two.</p> <p>22 So I didn't take a strand and say is this</p> <p>23 one different? And is this one different? And go</p> <p>24 down through that five times, because I felt it was</p> <p>25 all the same suture.</p>	<p style="text-align: right;">89</p> <p>1 A. Yes.</p> <p>2 Q. What was the educational course this last</p> <p>3 week that you helped with DePuy Mitek?</p> <p>4 A. It was educating reps who go into the</p> <p>5 operating room and, you know, are helping surgeons</p> <p>6 with their materials, sutures, implants, what not, and</p> <p>7 how to handle the operating room environment, be</p> <p>8 appropriate and be helpful.</p> <p>9 Q. The course was not on a particular DePuy</p> <p>10 Mitek technique or anything like that, it was --</p> <p>11 A. It was not focused on a particular product</p> <p>12 but it was focused on helping reps better sell DePuy</p> <p>13 Mitek products.</p> <p>14 Q. By being more professional in the</p> <p>15 operating room?</p> <p>16 A. Correct.</p> <p>17 Q. Is this the first time you have done that</p> <p>18 for DePuy Mitek?</p> <p>19 A. This is the second.</p> <p>20 Q. Other than those two courses, have you</p> <p>21 consulted with DePuy Mitek in any other courses?</p> <p>22 A. Yes.</p> <p>23 Q. What are those?</p> <p>24 A. There was an educational course in Chicago</p> <p>25 and you are going to say when and I'm going to guess</p>

<p style="text-align: right;">90</p> <p>1 four years ago. It was a cadaver course where they 2 were doing DePuy Mitek products and they asked me to 3 come give a couple of talks and help in the lab using 4 those products with the doctors who were there. 5 Q. Do you remember what those products were? 6 A. Not specifically. They were suture 7 anchors, suture passing instruments, but I don't 8 remember a specific product. 9 Q. Are you a consumer of DePuy Mitek 10 products? 11 A. Sure. 12 Q. What DePuy Mitek products do you use? 13 A. Well, I mentioned earlier I use OrthoCord. 14 I use some DePuy Mitek anchors. They make an electric 15 cautery unit that we use, in every case we use 16 electric cautery. 17 They have some suture-passing instruments 18 that we use. I use one of their drill guides and 19 fixation sets for ACL surgery. 20 Q. When you do an ACL fixation, what product 21 do you use? 22 A. It depends on the type of ACL that we're 23 doing. If I use a bone/tendon/bone graft which is a 24 common graft, on the femoral side, I fix it with a 25 DePuy Mitek device which is a couple of absorbable</p>	<p style="text-align: right;">92</p> <p>1 manufacturing state that those sutures have gone 2 through. And I'm wondering if you can look at those, 3 analyze them, do whatever you have to do, but tell me 4 which ones are coated and which ones are not coated, 5 if any? 6 A. So these are three separate types of 7 suture? 8 Q. They're three different sutures. Well, 9 I'm going to take that back. I don't know if they're 10 three different sutures. 11 MR. TAMBURIO: You are not sure what they 12 are. 13 MR. FALKE: We know what they are, yeah. I 14 mean, based on Pearsalls' representations of what they 15 are. If you need to cut them and get you a glass of 16 water, if you want to wet them. 17 MR. TAMBURIO: Are they in the same form in 18 which they were produced? 19 MR. FALKE: Yes, we did not alter them. 20 MR. TAMBURIO: Do we have Bates numbers? 21 Q. Slow down. Just for the record, so the 22 record is clear, what did you just do, Dr. Burks? 23 A. I just opened the suture that was in the 24 bag. 25 Q. What Exhibit Number is that?</p>
<p style="text-align: right;">91</p> <p>1 pins, and on the tibial side I fix it with either a 2 DePuy Mitek screw or a screw from a different company 3 depending on upon quality. 4 On the hamstring, I typically on the 5 femoral side use a Smith and Nephew product -- 6 Q. EndoButton? 7 A. EndoButton. On the tibial side I 8 typically use a Milagro screw and frequently for the 9 post use that Arthrex screw. 10 Q. When you say hamstring, that's soft 11 tissue? 12 A. Correct. 13 Q. Semitendonosis? 14 A. Very good. 15 MR. TAMBURIO: We're all half doctors here. 16 MR. FALKE: Let's take a break. 17 THE VIDEOGRAPHER: Off the record, 5:54. 18 (Brief recess.) 19 THE VIDEOGRAPHER: On the record, 6:02. 20 Q. (By Mr. Falke) Dr. Burks, I'm going to 21 hand you DePuy Mitek Exhibit 286, DePuy Mitek Exhibit 22 284 and DePuy Mitek 285. These are FiberWire samples 23 that were produced to us from Pearsalls who is a 24 company that makes FiberWire for Arthrex. 25 I covered up on those exhibits the</p>	<p style="text-align: right;">93</p> <p>1 A. That is 286. 2 Q. You cut a piece off of the suture in 3 Exhibit 286? 4 A. Right. 5 Q. And -- 6 MR. TAMBURIO: There's no Bates numbers on 7 these? 8 MR. FALKE: There were no Bates numbers. 9 Q. Would you put that on the suture you cut 10 from Exhibit 286 and mark with a pen Exhibit 286. 11 Now, can you explain what you are doing now, Dr. 12 Burks? First, can you put the suture that you took out 13 of 286 back in the bag? 14 A. (Witness complies.) 15 Q. Thank you, and then proceed. Can you 16 explain for the record what you are doing now? 17 A. I'm opening 285. 18 Q. You are cutting suture sample from Exhibit 19 285, right? 20 A. Yes. 21 Q. Could you please mark with the tape 22 Exhibit 285 that you've cut? Proceed. Can you state 23 what for the record what you are doing now? 24 A. I'm opening number 284. 25 Q. And cutting a suture from Exhibit 284?</p>

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<p style="text-align: right;">94</p> <p>1 A. Yes.</p> <p>2 Q. And now you are going to mark the suture</p> <p>3 sample that you took from Exhibit 284 with a flag?</p> <p>4 A. Correct.</p> <p>5 Q. Can you hand me the original sample sets</p> <p>6 back?</p> <p>7 A. (Witness complies.)</p> <p>8 Q. Also, I'm going to hand you DePuy Mitek</p> <p>9 Exhibit 234 which is a chart I'd like you to fill out</p> <p>10 if you could, please, and under the suture column put</p> <p>11 the numbers corresponding to the suture samples you've</p> <p>12 just cut, just 284, 285 and 286?</p> <p>13 A. Fair enough?</p> <p>14 Q. Fair enough.</p> <p>15 A. Have we got a while?</p> <p>16 Q. However long it takes you.</p> <p>17 MR. TAMBURRO: Are you representing that</p> <p>18 one of them is coated, one of them is not coated?</p> <p>19 MR. FALKE: I'm not making any</p> <p>20 representations. They could all be coated, they could</p> <p>21 all be uncoated, could be a mix?</p> <p>22 A. Can I use your notebook?</p> <p>23 Q. Of course. What do you need?</p> <p>24 A. I was going to use one of those metal</p> <p>25 rings.</p>	<p style="text-align: right;">96</p> <p>1 Q. And 286? Can you explain for the record</p> <p>2 please what you are doing now, Dr. Burks?</p> <p>3 A. I'm tying 284.</p> <p>4 (Discussion off the record.)</p> <p>5 A. Okay. So where is my little sheet here?</p> <p>6 Q. Based on what you've done so far, Dr.</p> <p>7 Burks, can you tell any difference between the</p> <p>8 sutures?</p> <p>9 A. I feel like I do feel a difference.</p> <p>10 Q. Okay. How would you describe that</p> <p>11 difference?</p> <p>12 A. Well, I would say at the moment 285 seems</p> <p>13 a little smoother to me than 284. So I would say 285</p> <p>14 is coated and 284 isn't coated.</p> <p>15 Q. How sure are you of that?</p> <p>16 A. I would not put my children's lives on it,</p> <p>17 but given the subjective feel.</p> <p>18 Q. Is it a subtle difference?</p> <p>19 A. It's a subtle difference.</p> <p>20 Q. Can you explain, Dr. Burks, what you are</p> <p>21 doing now?</p> <p>22 A. Just throwing knots. I would say 286 seems</p> <p>23 coated as well.</p> <p>24 Q. If you had gloves on right now, would that</p> <p>25 change the confidence level you have in determining</p>
<p style="text-align: right;">95</p> <p>1 Q. Sure. First, can you do a tactile feel</p> <p>2 analysis on it? Can you tell the difference?</p> <p>3 A. Kind of -- like I said, when you tie knots</p> <p>4 you combine that together.</p> <p>5 Q. Can you explain what you are doing now?</p> <p>6 A. I don't want to knock your little deal</p> <p>7 off, you know? I'm just getting a sense for how it</p> <p>8 slides and trying to put down a couple of throws.</p> <p>9 Q. Which Exhibit Number are you working on?</p> <p>10 A. I'm on 285.</p> <p>11 Q. Okay. What type of knots are you throwing?</p> <p>12 A. Half hitches.</p> <p>13 Q. Now, can you explain what you are doing,</p> <p>14 Dr. Burks?</p> <p>15 A. Same thing.</p> <p>16 Q. With which exhibit?</p> <p>17 A. 286.</p> <p>18 Q. Are you doing the same thing you did with</p> <p>19 the previous one?</p> <p>20 A. Yes.</p> <p>21 Q. Same knot configurations?</p> <p>22 A. Uh-huh.</p> <p>23 Q. Can you tell a difference between the</p> <p>24 first two sutures, Dr. Burks, Exhibit 285 and --</p> <p>25 A. 286.</p>	<p style="text-align: right;">97</p> <p>1 whether those are coated or uncoated sutures?</p> <p>2 MR. TAMBURRO: Objection, calls for</p> <p>3 speculation.</p> <p>4 A. I think gloves can make a difference,</p> <p>5 yeah.</p> <p>6 Q. How do they make a difference? The</p> <p>7 difference between the sutures is more subtle, right,</p> <p>8 with gloves because you don't have the contact like</p> <p>9 you described earlier with the skin?</p> <p>10 A. Yeah. Again, this is obviously a very</p> <p>11 subjective feel test. Some of that feel comes from how</p> <p>12 the suture feels and some of it comes from how you</p> <p>13 feel when you slide a knot. So we're not talking rocks</p> <p>14 and water as far as differences and so. . .</p> <p>15 Q. How would you qualify the difference that</p> <p>16 you just observed, based on your test?</p> <p>17 A. When you say "qualify" are you asking for</p> <p>18 like an amount?</p> <p>19 Q. How would you characterize the difference</p> <p>20 between the sutures?</p> <p>21 A. Well the difference is, I think, subtle</p> <p>22 and there's no doubt in my mind that I could line up,</p> <p>23 you know, a hundred sutures and have error where I</p> <p>24 would say, you know, I think this one is one way or</p> <p>25 the other and make a mistake.</p>

<p style="text-align: right;">98</p> <p>1 So there's certainly not enough difference</p> <p>2 to clearly say that I know every time exactly how that</p> <p>3 feels.</p> <p>4 Q. Okay. Could you just initial, please, the</p> <p>5 chart that you did?</p> <p>6 A. This right here?</p> <p>7 Q. Yes.</p> <p>8 A. Okay.</p> <p>9 Q. And put the date.</p> <p>10 A. (Witness complies.)</p> <p>11 Q. Okay. For the record, I have to mark the</p> <p>12 exhibits, the sutures that you tied onto my binder.</p> <p>13 Can you untie those?</p> <p>14 A. I can just open the binder.</p> <p>15 Q. How confident were you that 286 was</p> <p>16 coated?</p> <p>17 MR. TAMBURO: Objection, vague.</p> <p>18 A. I guess I've said that differences are</p> <p>19 subtle. So I'm going by a subjective feel. So I feel</p> <p>20 like there's a difference. Am I going to bet a lot of</p> <p>21 money on it? No, but that's my take.</p> <p>22 MR. FALKE: Okay. For the record I'm</p> <p>23 going to mark the suture that Dr. Burks tested with</p> <p>24 Exhibit 235 -- I'm going to state that over again.</p> <p>25 For the record, I'm going to mark with</p>	<p style="text-align: right;">100</p> <p>1 Deponent's Certificate</p> <p>2</p> <p>3 I, ROBERT T. BURKS, M.D., deponent herein,</p> <p>4 do hereby certify and declare the within and foregoing</p> <p>5 transcription to be my deposition in said action taken</p> <p>6 on June 7, 2006; that I have read, corrected, and do</p> <p>7 hereby affix my signature to said deposition.</p> <p>8</p> <p>9 DATED this ____ day of _____,</p> <p>10 2006.</p> <p>11</p> <p>12 _____</p> <p>13 Deponent</p> <p>14)</p> <p>15 STATE OF UTAH) ss.</p> <p>16)</p> <p>17 SUBSCRIBED AND SWORN to before me this</p> <p>18 day of _____, 2006.</p> <p>19</p> <p>20 _____</p> <p>21 Notary Public residing in</p> <p>22 _____</p> <p>23 My Commission Expires:</p> <p>24 _____</p> <p>25</p>
<p style="text-align: right;">99</p> <p>1 Exhibit 235 the suture Exhibit 284 that Dr. Burks just</p> <p>2 tested, and I'm going to mark Dr. Burks' tested suture</p> <p>3 286 with DePuy Mitek Exhibit 236, and I'm going to</p> <p>4 mark Dr. Burks' tested suture 285 with DePuy Mitek</p> <p>5 Exhibit 237.</p> <p>6 I have no further questions.</p> <p>7 EXAMINATION</p> <p>8 BY MR. TAMBURO:</p> <p>9 Q. Dr. Burks, there was some discussion about</p> <p>10 work you had performed on behalf of DePuy Mitek; do</p> <p>11 you recall that?</p> <p>12 A. Yes.</p> <p>13 Q. Were you compensated by DePuy Mitek for</p> <p>14 the work you performed?</p> <p>15 A. Yes.</p> <p>16 MR. TAMBURO: I have no further questions.</p> <p>17 MR. FALKE: Okay, thank you for your time.</p> <p>18 THE VIDEOGRAPHER: End of deposition,</p> <p>19 6:18.</p> <p>20 -O-</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">101</p> <p>1 Reporter's Certificate</p> <p>2 State of Utah)</p> <p>3 County of Salt Lake)</p> <p>4</p> <p>5 I, Denise Kirk, Certified Shorthand</p> <p>6 Reporter, Registered Professional Reporter, and Notary</p> <p>7 Public for the State of Utah, do hereby certify:</p> <p>8 THAT the foregoing proceedings were taken</p> <p>9 before me at the time and place set forth herein; that</p> <p>10 the witness was duly sworn to tell the truth, the</p> <p>11 whole truth, and nothing but the truth; and that the</p> <p>12 proceedings were taken down by me in shorthand and</p> <p>13 thereafter transcribed into typewriting under my</p> <p>14 direction and supervision;</p> <p>15 THAT the foregoing pages contain a true</p> <p>16 and correct transcription of my said shorthand notes</p> <p>17 so taken.</p> <p>18 IN WITNESS WHEREOF, I have subscribed my</p> <p>19 name and affixed my seal this 11th day of June, 2006.</p> <p>20</p> <p>21 _____</p> <p>22 DENISE KIRK, CSR/RPR</p> <p>23 My commission expires:</p> <p>24 August 30, 2006</p> <p>25</p>

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